



December 10, 2024

Michiko Martin
Southwestern Regional Forester
333 Broadway Blvd SE
Albuquerque, NM 7102

Submitted online at <https://cara.fs2c.usda.gov/Public//CommentInput?Project=61390>

Re: Objection to Taos Ski Valley Gondola and Other Improvements, Project #61390

Dear Regional Forester Martin,

Objector Winter Wildlands Alliance (WWA) files this objection to the Carson National Forest's Draft Decision Notice (draft decision) and final Environmental Assessment (EA) regarding the Taos Ski Valley Gondola and Other Improvements Project, noticed October 31, 2024. James Duran, Carson National Forest Supervisor, is the Responsible Official.

WWA filed timely comments on the Notice of Intent for this project on May 2, 2022 as well as the draft EA on May 17, 2023 and is therefore eligible to object under 36 CFR 218, Subparts A and B.

On May 24, 2023 WWA, along with our local grassroots group Taos Mountains Alliance, filed two Freedom of Information (FOIA) requests with the Carson National Forest to obtain information necessary to better understanding this project with the intent of informing our comments and objections. Our FOIA requests sought information on how the Forest Service has worked with Taos Ski Valley, Inc. (TSV), associated companies, and key landowners to develop the current project and the Master Development Plan, and how the ski area is currently managed. These requests were assigned tracking numbers 2023-FS-R3-03962-F and 2023-FS-R3-03978-F. To-date we have only received a final response to 2023-FS-R3-03978-F and this response did not include most of the information we had requested. In this request we had asked for copies of the following documents: (1) The Area of Potential Effects (APE) for Taos Ski Valley, Inc. and/or for the "Taos Ski Valley Gondola and Other Improvements" project; (2) Taos Ski Valley, Inc.'s current Site Development Schedule; (3) Taos Ski Valley, Inc.'s Winter Operating Plans for 2019 through 2023; (4) Taos Ski Valley, Inc.'s Summer Operating Plans for 2019 through 2023; (5) Taos Ski Valley, Inc.'s current Water Conservation Plan; and (6) Taos Ski Valley, Inc.'s current Special Use Permit Appendix B, Improvements Authorized. In response, we received a number of redacted email communications and the operating plans but not the APE, Site Development Schedule, Water Conservation Plan, or the Appendix that were requested. NEPA contemplates prompt and meaningful access to agency records as part of all agencies' public participation duties. See 40 C.F.R. § 1506.6(f) agencies must make "environmental impact statements, the comments received, and any underlying documents available to the public pursuant to [FOIA], without regard to the exclusion for interagency memoranda where such memoranda transmit comments of the Federal agencies on the environmental impact of the proposed action."). Delaying prompt access to these materials violates the purposes of FOIA and NEPA. It is appropriate to address FOIA requests in resolving our objections, not as per se FOIA violations, but as part of a well-established Forest Service pattern and practice of unlawfully delaying FOIA access to NEPA commenters whose requests are directly designed to better understand the project for the purposes of informing how and whether to object to the draft decision. The impact



on NEPA's action-forcing and public participation purposes can be remedied by requiring FOIA disclosure, an opportunity to comment, and revised decisions after full compliance with FOIA.

Objections

1. We object to the Finding of No Significant Impact

When we reviewed the draft EA we felt that this project merited a more robust environmental review through an Environmental Impact Statement, as we discussed on pages 1 and 2 of our draft EA comments. Now, having reviewed the final EA, we object to the Finding of No Significant Impact (FONSI). Significance requiring the preparation of an Environmental Impact Statement (EIS) is established in several ways. Foremost, the 267-page EA confirms that the FONSI inappropriately concluded that an EIS can be avoided. A 150-page limit now applies to EISs, and even complex EISs are now limited to 300. 40 CFR 1502.7 ("The text of final environmental impact statements, not including citations or appendices, shall not exceed 150 pages except for proposals of extraordinary complexity, which shall not exceed 300 pages."). The length of the EA itself confirms that the project proposal must undergo the more rigorous procedures and scrutiny applicable to EISs. While we appreciate the increased level of detail between the draft and final EA, much of what the public raised in comments per the substance of this proposal remains unaddressed. For example, concerns regarding how increased snowmaking will impact overall water usage and related effects on downstream water right holders are a common thread throughout the public comments yet the EA does not consider the cumulative impacts of additional water usage resulting from this project or specific protections for downstream users' water rights.

Appendix D of the EA documents the Forest Service's rationale for a FONSI, starting with the assertion that there will be no adverse effect to recreation. Our comments, along with many other comments submitted throughout this process, discuss the ways in which we foresee both short- and long-term adverse effects to winter recreation (see pages 5 and 6 of our draft EA comments). Although this project may be primarily, or wholly, beneficial to recreation within the ski area boundary, it will have an adverse effect on dispersed recreation adjacent to the ski area. For example, as we described in our earlier comments, winter access to Wheeler Peak and Williams Lake is threatened by this project. An alternate route for this trail was placed at the bottom of the El Funko ski run in the resort. This new route is not suitable for skiing or snowshoeing because of the difficult steep and rocky terrain and avalanche dangers from El Funko ski run. Page 94 of the EA states that the purpose of this re-route was to improve the summer opportunities offered at TSV. Furthermore, the proposed Lift 4 hiking trail would not serve winter recreationists, nor would it provide access to desired backcountry ski terrain in the Wheeler Peak Wilderness. In considering access to National Forest lands and the Wheeler Peak Trail in particular, the EA focuses on how the Lift 4 hiking trail will relieve summer hiking pressure on the Wheeler Peak Trail and provide an alternative hiking experience, but it does not address our concerns with winter access. Winter access to the Wheeler Peak Wilderness, via the Williams Lake trail is extremely important to our constituency. Absent a discussion in the EA to the contrary, we have no reason to believe this project will not significantly impact winter access to the Wheeler Peak Wilderness.

Another reason that a FONSI is not warranted is the effect that this project will have on the Rio Hondo watershed. We raised concerns about the impacts to water quality and quantity in our draft EA comments (pages 6 and 7). However, many of the statements and assumptions we took issue with in the draft EA remain unchanged in the final document. Furthermore, the information presented in the final EA only heighten our concerns with the impact this project will have on the Rio Hondo. For example,



page 70 of the EA describes how future ski seasons are projected to be shorter, along with increased rain on snow events, which affect snow retention. It's clear that TSV intends to compensate for these challenges to running a ski resort by increasing snow making and increasing non-snow activities. Making snow, only to have it melt and need to be replaced with more man-made snow, will consume more water (melt from man-made snow is not 100% equivalent to the amount of water used in the snowmaking process) and the water that does return to the watershed will be polluted by ski wax chemicals, vehicle emissions, and other surface pollutants. The new Lift 7 restaurant will also impact the watershed. Although the EA claims that because the Lift 7 restaurant will rely on well water, this usage will not impact the Rio Hondo, the connection between ground and surface water within a watershed is well documented. The Lift 7 restaurant will be utilizing water from the Rio Hondo watershed, even if this water is accessed via a well. Furthermore, as we discussed in our draft EA comments, we have serious concerns about wastewater storage and treatment related to this restaurant and other on-mountain infrastructure.

The EAs assertion that the vast majority of TSV's water use is not consumptive¹ is inaccurate. We touched on this on page 7 of our draft EA comments. Studies that have examined water usage with snowmaking have found that, on average, 20.7% of water used in snowmaking is lost to sublimation, evaporation, wind drift, and leaking.² While some of this water is thus retained within the watershed, some amount of water is lost, meaning that at least a portion of snowmaking must be considered a consumptive use. This must be accounted for in analyzing whether TSV's proposed action would be within their allowed consumptive use of 0.11 acre-feet/day between April 11 and October 25. Likewise, there is an effect to removing water from the Rio Hondo, even if temporarily. If TSV water use activities coincide with periods of drought or low water within the watershed, even if the water is eventually returned in an altered form, there are environmental impacts to consider.

We agree with the Forest Service when it states in this EA that "The combination of a shorter winter season and earlier spring melt will have serious impacts on water resources, ecosystems, and the economy at TSV".³ Indeed, these serious impacts are the reason we believe an EIS is warranted.

Resolution: Due to the significant environmental impacts stemming from this project, specifically relating to the Rio Hondo watershed and winter access to the Wheeler Peak Wilderness, the Forest Service should be directed to file a Notice of Intent that it will prepare an Environmental Impact Statement, and follow the procedures that Congress adopted when directing agencies to prepare detailed environmental reports, here an EIS, as the means to protect the human environment.

2. We object to the narrow range of alternatives presented in the EA

While we appreciate that the EA includes and analyzes a No Action Alternative, pages 1-4 of our draft EA comments describe the many legal and practical reasons why this project also merits additional Action alternatives. We disagree with the Forest Service's rationale for rejecting additional alternatives, most of which boil down to any additional alternatives being outside of the Purpose and Need statement. This is not a reflection on the merits of alternatives presented by the public, but rather is a reflection on the

¹ EA page 56

² See for example Grünewald T and Wolfsperger F (2019) Water Losses During Technical Snow Production: Results From Field Experiments. *Front. Earth Sci.* 7:78. doi: 10.3389/feart.2019.00078

³ EA page 76



incredibly narrow Purpose and Need statement developed for this EA, which simply restates what TSV has requested the Forest Service approve. The Purpose and Need thus created a narrow path wherein the only possible route is the one defined by the project proponent. This sets a predetermined outcome, which does a disservice to the entire NEPA process and the many members of the public who took the time to engage with it.

As we cited in our draft EA comments, the 10th Circuit has found that “courts will not allow an agency to define the objectives so narrowly as to preclude a reasonable consideration of alternatives.” *Citizens’ Comm. to Save Our Canyons*, 297 F.3d at 1030 (10th Cir. 2002) (citing *Davis v. Mineta*, 302 F.3d 1104 (10th Cir. 2002)). This EA fails to comply with case law regarding the development of alternatives, as we described on page 4 of our draft EA comments. The natural environment and resources found in and adjacent to the project area should have driven the development of at least one additional alternative regarding issues raised by the public during the comment periods. It would have been appropriate for this EA – or an EIS – to include an alternative that enshrined public use of the historic Williams Lake trail. Instead, this EA only considers a new summer hiking trail that fails to meet the desires of winter Wilderness users. The use and availability of water resources is an issue that should have also driven the development of an additional alternative. The EA is based on the premise that TSVI has a 200-acre-foot water right but fails to delve into the nuances of this water right and how it may or may not provide water necessary for new and year-round uses, such as restaurants, bathroom facilities, and increased snowmaking. The Forest Service should have developed at least one additional action alternative to better explore this unresolved issue. *Rosenkrance*, 2011 WL 39651, at *8 (D. Id. Jan. 5, 2011); *Bosworth*, 439 F.3d at 1195 (10th Cir. 2006).

Although the NEPA duty to compare a reasonable range of alternatives falls on the agency, the EA and comments have identified reasonable alternatives that were not considered. Beginning on page 22, the EA eliminates five alternatives from its NEPA analysis with conclusory statements. The use of a narrow purpose and need was asserted to dismiss eight additional alternatives from NEPA analysis. Although the EA says these alternatives were “considered” at some level, the delayed FOIA responses prevent us from fully objecting to the unreasonable elimination of at least thirteen alternatives from NEPA analysis. As part of the objection review, the objection officer has the authority to demand the Forest Service immediately produce all responsive records, to the officer and the FOIA requesters, which we submit will confirm that the EA was unreasonably limited in scope for the purposes of reaching a FONSI avoiding an EIS. This information can then inform any hearings the objection officer may convene.

A review of the comments submitted on the draft EA shows that there are significant concerns from a majority of commentors about the main elements of this project, and that the public provided many ideas that should have been incorporated into an additional Alternative that focuses on avoiding impacts to public access and water rights. For brevity, we refer to this as a Protection of Public Rights Alternative. In order to satisfy NEPA’s public comment mandate, the objections should result in the Forest Service taking steps to develop alternatives and conduct an EIS in accordance with NEPA’s action-forcing mandates, instead of limiting the analyses and options available to the decisionmaker by issuing an EA with an unreasonably narrow purpose and need.

Resolution: the Forest Service must use the scoping process to develop at least one additional alternative addressing the purpose and need that recognizes public rights as an integral aspect of the major federal action, that is substantially different from the Proposed Action in terms of water usage and public access



to Williams Lake. To achieve this, it will necessary to broaden the Purpose and Need Statement to allow reasonable alternatives to be identified in a new EIS scoping period

Thank you very much for your consideration of the above objections. This project will have significant long-term impacts to National Forest lands. Once new development is approved and constructed it is difficult or impossible to reverse course. For this reason, it is critically important than any approvals are granted only with careful consideration of all that is at stake. If there is an opportunity to do so, we would like to meet with the Reviewing Officer at a mutually convenient time to discuss our objection. Please inform us in writing of any responses to these objections, of any further opportunities to comment, or decisions related to this project.

Sincerely,

A handwritten signature in black ink, appearing to read "Hilary Eisen". The signature is fluid and stylized, with a large loop at the end.

Hilary Eisen, Lead Objector
Policy Director, Winter Wildlands Alliance
PO Box 631, Bozeman MT 59771
(208) 629-1986
heisen@winterwildlands.org